UNCLASSIFIED

THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

New York, March 15-May 7, 1976

US Delegation Report

I. Summary of Delegation Report

Following is a summary of the Delegation Report on the New York Session of the Law of the Sea Conference, March 15-May 7, 1976. The detailed Delegation Report on the work of the Main Committees is included.

The fourth session of the Law of the Sea Conference met in New York from March 15 to May 7. The basis of discussion and negotiation was the Single Negotiating Text prepared by the three Chairmen of the Main Committees, and by the President of the Conference with respect to dispute settlement. After virtually complete discussion of these texts at the current session, revisions were released on the last day of the current session. These revisions were prepared by the respective Chairmen, and with respect to dispute settlement, by the President of the Conference, taking into account discussions and negotiations at this session.

On April 8 Secretary Kissinger made a major statement on the LOS negotiations before an American audience which was circulated to all delegations, and then met with the conference officers and the heads of delegation, where he made additional remarks. The Secretary's statement and appearance were widely welcomed as an indication of the high-level United States interest in an early and successful conclusion to the negotiations, and his new proposals regarding the deep seabeds were welcomed as evidence of a real effort to accommodate the interests of developing countries.

The Conference has decided to convene another session in New York from August 2 to September 17. Procedures are likely to emphasize negotiations on important outstanding issues leading to an overall package treaty.

Since the revised Single Negotiating Texts were issued on the last day of the session, it is not possible to include an evaluation of them in this report. An initial reading would indicate the following significant points.

COMMITTEE I

The new text contains refined ideas with respect to an accommodation of the interests of developing countries, industrialized countries, consumers, and producers. In particular it specifies conditions under which States and their nationals would have access to the exploration and exploitation of deep seabed minerals, the control of the Authority in this regard, and establishes a system under which prime mining sites would be reserved for exploitation by the "Enterprise" (the exploitation arm of the Authority) and developing countries. It also contains specific provisions, including an interim production limit, to protect developing country land-based producers of metals also produced on the seabed. New procedures for the Assembly designed to protect the interests of all concerned are included.

The text specifically notes that the important question of the composition and voting of the Council of the Seabed Authority "has not yet been fully dealt with by the Committee."

COMMITTEE II

No major changes were made in the Committee II text. As specifically noted in the introductory note of the Chairman to the revised text, certain important issues remain to be resolved. These include the question of the high seas status of the economic zone and the question of the access of land-locked and other "geographically disadvantaged" States to living resources of the economic zone. The Chairman's basic approach to the revision of this text is indicated in paragraphs 7, 8 and 9 of his introductory note, which are as follows:

"7. By far the largest category of articles consisted of those to which no amendments commanding other than minimal support were introduced. It was clear that these should be retained as they were in the single negotiating text.

"8. A second group consisted of articles where there was a clear trend favoring the inclusion of a particular amendment or where I was given a mandate to make a change within agreed limits.

"9. A third category consisted of articles dealing with issues which could be identified, on the basis of extensive discussion, as those on which negotiations were most needed.

My response to these issues varied according to my assessment of the state reached in the negotiations. In certain cases, I felt I could suggest a compromise solution. In other cases I considered that negotiations would be advanced if I were to at least point the way to an eventual solution. In still other cases, I felt that while there may be a need for a change in the Single Negotiating Text, any modifications to the text might prove counterproductive in the search for a solution."

COMMITTEE III

1. Pollution: The major changes relate to vessel-source pollution. They include specific enforcement rights for port States for violations of international discharge regulation regardless of where they occur, and specified enforcement rights for coastal States with respect to discharges in the economic zone in violation of international standards.

2. Scientific research: With respect to marine scientific research, a major change has been made which would require the consent of the coastal State for marine scientific research for activities in the economic zone or on the continental shelf, provided that consent shall not be withheld unless the project bears substantially upon the exploration and exploitation of resources, involves drilling or the use of explosives, unduly interferes with coastal State economic activities in accordance with its jurisdiction, or involves the construction, operation or use of artificial islands, and structures subject to coastal State jurisdiction. The procedures for settlement of disputes are elaborated further in this regard.

SETTLEMENT OF DISPUTES

The new text contains new language on those cases in which the compulsory procedures would apply to disputes in the economic zone. It adopts a formula on procedures which permits a State to choose among the following procedures in cases in which it would be subject to suit: (a) arbitration; (b) the International Court of Justice; (c) a new Law of the Sea Tribunal; or (d) specialized procedures for particular kinds of disputes (although, if (d) is selected, the State must also select a, b, or c for disputes not covered by the specialized procedures).

II. Committee I (Deep Seabeds)

Committee I completed a review of almost all articles of Part I of the Single Negotiating Text.

Toward the end of the session, the Chairman of Committee I, Paul Engo of the Cameroon, issued as informal conference documents new texts which significantly modified the SNT he had issued in Geneva in 1975. He characterized these texts as his personal assessment of the emerging consensus in the Committee I negotiations. These texts were issued on the last day of the Conference as the Revised Single Negotiating Text, Part I.

A. System of Exploitation and Access to Deep Seabed Resources

The Committee began the session by considering Annex I (Basic Conditions of Prospecting, Exploration and Exploitation) to Part I of the LOS Treaty. This Annex elaborates the mechanism for obtaining contracts, the qualifications and selection of applicants, the rights and obligations under the contract, terms for suspension and revision of contracts, and the scope of the Seabed Authority's rules, regulations, and procedures. It sets forth the objective criteria upon which these rules and regulations must be based.

Annex I supplements the basic provision in the body of the treaty on the system of access (Article 22). This article lies at the heart of the deep seabed negotiations, as it determines the right of access of States and their nationals to the mineral resources.

The system of exploitation included in the new SNT consists of a system in which the Authority, through its operating arm, the Enterprise, may exploit the deep seabed directly or exploitation may be carried out pursuant to contracts concluded with the Authority in accordance with Annex I by member States or their nationals.

Annex I elaborates a new system of revenue sharing between the contractor and the Authority. The Committee did not complete its consideration of this issue. As a result, a formula including precise figures was not negotiated. The revised Annex provides two alternative formulas: one is

based on a revenue sharing scheme widely used which includes a grace period from payments followed by a sliding scale based on profits or an alternative royalty system utilized at the discretion of the operator. A second alternative formula provides for revenue sharing or royalties at the discretion of the Authority.

B. Economic Implications

Committee I has for many years questioned the economic effect deep seabed mining may have on developing country land-based producers of manganese, copper, nickel and cobalt. A number of these land-based producers have attempted in the negotiations to provide protection for their countries by giving the Authority the power to control directly price and production of these metals mined from the seabed. The U.S. and a number of other countries have strongly opposed giving the Authority the power to control prices or production. A failure to find a compromise on this issue has been one of the major obstacles to a successful conclusion of the negotiations on seabed issues. The new SNT issued by Engo includes an article (Article 9) which attempts to achieve a compromise on this point. It provides for a 20-year period during which time a production limitation would apply to ensure that ocean mining does not produce more than the projected cumulative growth segment of the nickel market.

C. Assembly and Council

Another difficult area in the negotiations has been the delineation of the relative powers and functions of the Assembly and Council of the Authority. The new SNT attempts a balance between these two organs of the Authority. The new Assembly is the supreme organ of the Authority with the power to prescribe general policies by adopting resolutions and making recommendations. The Council is the executive organ of the Authority with the power to prescribe specific policies to be pursued by the Authority.

D. Commissions

The new SNT establishes three commissions: the Economic Planning Commission, the Technical Commission and the Rules and Regulations Commission. In addition, there are a number of general and housekeeping articles which were largely agreed upon.

E. Dispute Settlement System

Most delegations favor a system which includes a permanent organ of the Authority with the power and duty to take final, binding decisions regarding all disputes arising under Part I of the Convention, relating to the conduct of exploration and exploitation. The new SNT reflects this philosophy. However, a few delegations, holding a different view --that all decisions should be made through a system of ad hoc arbitration-- pressed their views strongly and will do so in the next session.

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A number of important issues were debated but only in a preliminary manner during this session and will have to be negotiated in more detail during the next session of the Conference.

F. Provisional Application

One such issue is whether the Law of the Sea Treaty, and particularly Part I, should be applied provisionally before the treaty as a whole enters permanently into force. Some delegations felt that this question can be more appropriately dealt with later or not at all. The majority view, however, supports provisional application of the treaty as a whole while recognizing that this concept may involve certain technical, or juridical difficulties for some States.

G. The Enterprise

A major concern of developing countries is the establishment of a functioning Enterprise which would be the organ of the Authority which would exploit seabed resources directly. During the closing days of the Conference session, a draft Annex II (The Statute of the Enterprise) was circulated. While there was some discussion on this question, the debate was inconclusive and the details remain to be resolved at the next session. The fundamental issue of concern to developed and non-developed countries is how the Enterprise will be financed. The developed countries advocated a system in which the Enterprise could borrow money in capital markets as well as receive a portion of the Authority's revenue sharing funds, while some developing countries urged that there be a mandatory fee levied on all States parties. The Enterprise

statute and the related articles in the treaty on financing the Authority remain to be settled at a later date.

H. Council Voting

The most important issue which was not resolved concerns the composition and voting system in the Council. The U.S. and other developed countries clearly stated that they could not accept the system provided for in the SNT of March 1975. The U.S. in December 1975 proposed amendments which would strengthen this article from our point of view. However, our representatives have made it clear that we are not satisfied with our own amendments to the SNT, and have said that we would propose a new article at the next session. In light of this, Chairman Engo did not hold consultations on this extremely important issue. The SNT contains the text of the Geneva SNT but there is a clear understanding that this issue would be discussed and negotiated at the next session.

I. Quota System or Anti-Monoply Article

Several industrialized countries pressed vigorously for a limit on the number of mines sites or contracts which any one State or its nationals could obtain from the Authority at any given time. This view was resisted with equal vigor by the United States, which explained that there are several hundred prime mine sites and thousands more of good quality for the future. This issue remains as one of the most difficult in the negotiations ahead. The developing countries sidestepped this issue rather than take sides in a dispute among and between developed countries.

J. Secretary's Statement

During this session of the Conference, Secretary Kissinger made a statement (April 8 before the Foreign Police Association) in which he outlined the major remaining issues that had to be resolved in the LOS negotiations, citing specifically the difficult problems in Committee I. Secretary Kissinger outlined the compromise package proposal as an effort to bridge differences in the negotiations. This speech was regarded as an important contribution to achieving an atmosphere of accommodation.

III. Committee II (Territorial seas, Straits, the Economic Zone, the Continental Shelf, High Seas, Archipelagoes, Land-locked States, Islands, and Enclosed and Semi-enclosed Seas)

The work of Committee II was organized to discuss in informal working sessions of the full committee all issues in the Informal Single Negotiating Text issued at the end of the last session in Geneva. The discussion proceeded on an article-by-article basis. In an attempt to expedite the work, a rule was adopted whereby silence on the part of any delegation would be interpreted as indicating support for the Geneva Single Negotiating Text and opposition to any amendments proposed. While small group consultations were possible, and did in fact take place (tuna, land-locked and geographically disadvantaged States), the committee working sessions each day left little time for such consultations. After six-and-one-half weeks of intensive work, the consideration of all Committee II articles was completed, and the Chairman commenced the preparation of a revised text. The clear overall impression of the debate was that Part II of the Geneva Single Negotiating Text was broadly acceptable.

The major contentious issues in Committee II faced by the Fourth Session were:

1. the juridical status of the economic zone as high seas; and

2. the access to the sea by land-locked States, and the access to the resources in the economic zones of States of a region by such States and geographically disadvantaged States of the region.

Other important issues on which there was significant division were:

1. delimitation of economic zone and continental shelf boundaries between opposite and adjacent States including the question of islands;

2. the question of coastal State authority over construction, design, equipment and manning standards for foreign vessels in the territorial seas, which is related to the Committee III pollution negotiations;

3. Highly migratory species;

4. Resource rights for territories under foreign occupation or colonial domination.

It will also be necessary to do further work with regard to the continental shelf beyond 200 miles, although the basic framework of a solution seems to be apparent at this point: a precise definition of the outer limit combined with revenue sharing beyond 200 miles.

It is clear that delegations now have a better grasp of the overall Committee II package, though a number of issues are still outstanding.

A. Territorial Seas

There was continued broad support within the committee for a 12-mile territorial sea as a part of an overall, widely accepted package. Some coastal States continued, however, to press for 200 miles, or reserved positions on breadth pending clarification of coastal States' rights in the exclusive economic zone. Neither proposals for 200-mile territorial seas, nor those for extensive historic waters received much support. Provisions on baselines received general approval with minor exceptions. In the discussion of delimitation between opposite or adjacent States the distinction surfaced, which appeared later as well, between the use of equity and equidistance as the proper criterion.

B. Innocent Passage in the Territorial Sea

There was general support in committee for retaining the regime for innocent passage as set forth in the Geneva Single Negotiating Text. There was some attempt to limit the right of innocent passage, as a preliminary to the straits debate, but none of the major amendments received significant support. In addition, a group of States suggested amendments making the list of non-innocent acts explicitly non-exhaustive. Debate over whether the coastal State could adopt laws and regulations concerning the design, construction, manning and equipping of vessels in innocent passage in the territorial sea was inconclusive, as was the debate over the retention of provisions concerning the documentation of nuclear-powered ships. The former issue is a vessel-source pollution issue being negotiated in Committee III.

C. Straits Used for International Navigation

With the exception of vocal objections by a small number of strait States, the discussion of these articles reflected a general willingness to accept the Single Negotiating Text. The majority of States indicated this by remaining silent on the issue. An initial attempt to delete the entire part and a suggestion that there be further consultations among interested parties received little support. As anticipated, a small number of states pressed for amendments which would have the result of transforming the transit passage regime to one of innocent passage. Some States pressed for provisions for State responsibility for loss or damage resulting from passage of ships. Both efforts generated little support.

D. The Exclusive Economic Zone

Debate on the exclusive economic zone articles of the Single Negotiating Text was extensive and foreshadowed the general debate on the nature and character of the economic zone as high seas which took place in connection with the high seas section. Strong efforts by land-locked and geographically disadvantaged States to secure access to economic zones on a regional basis also emerged in the debate. Maritime States sought amendments that would limit treatment of coastal State authority in the economic zone regarding pollution and scientific research to a cross reference to the work of Committee III. While there was widespread support for sovereign rights over resources, some coastal States sought to achieve broader jurisdiction tantamount to a territorial sea. The group of land-locked and geographically disadvantaged States strongly opposed the latter concept and proposed amendments that would ensure strong language regarding their rights of access to the living resources in the economic zones of States on a regional basis. This evoked equally strong coastal State reactions. Articles on fishing and surplus of coastal State fish stocks received little comment, while many States were still of differing views on regional arrangements for the management and conservation of highly migratory species. The article on anadromous species drew no substantial comment and appears broadly acceptable. The question of delimitation again received committee attention with a clear split between states favoring the median line and those preferring to place emphasis on special circumstances.

E. Continental Shelf

The primary issue in the Committee debate on the continental shelf involved the extent of coastal States jurisdiction.

A number of States argued for limiting such jurisdiction to 200 nautical miles, while a number of States with broad margins pressed for jurisdiction over the full continental margin where it extends beyond 200 miles. Public debate and private conversations indicated emergence of wide support for a compromise including acceptance of coastal State jurisdiction beyond 200 miles to a precisely defined limit combined with sharing according to a treaty formula by the coastal State of revenues generated from exploitation of the mineral resources of the margin beyond 200 miles.

F. High Seas

The majority of the discussions on this topic were devoted to a thorough airing of the question of the juridical nature of the economic zone, with approximately three-quarters of the States present participating in the debate. States were evenly split on whether the exclusion of the economic zone from the high seas should be removed from Article 73, with corresponding changes in other relevant articles. The length and complexity of the debate showed a desire by many for some change in the article which would preserve the high seas status of the economic zone. Secretary Kissinger expressly stated that the economic zone remains high seas. Attempts were made by some delegations to find a compromise based upon an exclusion from the regime of the high seas of those coastal States' rights expressly provided for in the convention. Most other articles received little comment.

G. Living Resources Beyond the Economic Zone

The provisions of this part were for the most part acceptable. Some support was generated for amendments calling for coordination of management and conservation of living resources beyond the economic zone through regional, subregional or global organizations, and for minimizing conflicts between fishing within and outside the economic zone. In addition, some whaling States sought deletion of the reference in Article 53 to prohibitions or special limitations on exploitation of marine mammals.

H. Land-Locked State Access to the Sea

The land-locked States opened debate on this subject calling for the right of transit through the territories of transit States for the purpose of access to the sea, subject to terms and conditions to be set by agreement. Such proposals were met by strong opposition from coastal transit States seeking a more limited version, suggesting that the principle of reciprocity should in all cases apply.

I. Archipelagic States

There was little support for changes in the Geneva Single Negotiating Text. Attempts to alter the size of the envelope enclosing an archipelago, along with those designed to extend the concept by changing the land-water ratio, received little support. Debate centered upon the length of permissible archipelagic baselines with general support for limits set forth in the text with a small number of exceptions permitted. Several States pressed for extension of the archipelago concept to archipelagos of continental States, but attracted little support.

J. Islands

This article was generally acceptable to the committee. The Geneva Single Negotiating Text provides that rocks which cannot sustain human habitation or economic life of their own shall not have an economic zone or continental shelf. A proposal to delete this reference drew strong, but not majority, support.

K. Enclosed and Semi-Enclosed Seas

The text of these articles providing for States bordering on enclosed or semi-enclosed seas to cooperate in meeting common problems seemed generally acceptable to most States provided that the duty was not strengthened, and perhaps weakened a bit. Proposals in this area tended to be attempts to adjust the texts to deal with limited, special situations, and these suggestions received only limited regional support.

L. Territories Under Foreign Occupation or Colonial Domination

Article 136 of the Geneva Single Negotiating Text would make special provisions for exercise of resource rights in certain categories of non self-governing territories. Discussion of this article tended to be highly politicized and there was considerable support on the one hand for revising the text to make it less discriminatory (i.e. inclusion of reference to associated States) and for extending it to include liberation movements on the other. There was also some recognition that the issues involved cannot be resolved in the Law of the Sea forum. Several compromise proposals were suggested for the Chairman's consideration.

M. Landlocked State Access to Marine Resources

Minister Jens Evensen of Norway convened a group of interested States during the session to attempt to find an acceptable formula for Articles 57, 58 and 59 dealing with access of land-locked and geographically disadvantaged States to the living resources of the economic zones of coastal States of their region. A text was produced for submission to the Chairman, but significant disagreement on the issues remains.

IV. Committee III (Pollution and Scientific Research)

A. Protection of the Marine Environment

Objectives in this part of the LOS negotiations have been to establish effective environmental protection obligations with regard to all sources of marine pollution. In general, this would include standard-setting and enforcement rights for each source and, with the exception of land-based pollution, to require that domestic regulations be at least as effective as international regulations. In addition, much effort was devoted to finding a settlement on vessel-source pollution which would ensure effective enforcement of the regulations while not impinging on navigation. The negotiating process occurred mainly within the informal working group of the whole and through consultations conducted by Chairman Jose Louis Vallarta (Mexico).

An important initial decision was not to reopen the first 15 articles of the Geneva Single Negotiating Text which were previously negotiated. These cover the general obligations to prevent pollution, global and regional cooperation on pollution problems, technical assistance, monitoring, and environmental assessments. A few changes were made to these texts based on Evensen Group intersessional work. Article-by-article discussion then took place on Articles 16 through 19 and 21 through 25 with few changes being made to the Geneva Single Negotiating Text. These articles provide for the establishment and enforcement of regulations on land-based pollution, continental shelf pollution and ocean dumping and indicate that pollution from

deep seabed exploration and exploitation of resources will be handled in Committee I. On the vessel-source pollution articles (20, 26-39), the discussion took place on an issue-by-issue approach. After general debate in the working group of the whole, real negotiation took place in an informal consulting group open to all countries. There was movement toward compromise on the part of both the coastal and maritime States. The tenor of the discussions permitted Ambassador Yankov to produce a new text which may be very close to a final treaty on most issues.

In the area of vessel-source pollution, three major aspects were addressed: coastal state regulations in the economic zone; enforcement generally against vessel-source pollution; and coastal State rights in the territorial sea.

With respect to economic zone regulations, most countries agree that there should only be generally applicable international regulations in the economic zone, although there would be special areas, defined by criteria in the treaty, in which more strict international discharge regulations would apply. In general, the criteria and regulations in these special areas would be the same as those in the 1973 IMCO Convention. In addition, the text contains an article giving coastal States standard-setting and enforcement rights in ice-covered areas within the limits of the economic zone.

On enforcement of international discharge regulations, an accommodation has been generally supported along the following lines:

(a) strict flag State obligations to take effective enforcement action;

(b) port State enforcement rights to prosecute vessels in its ports for international discharge standard violations regardless of where they occur;

(c) a coastal State right to take enforcement action in the economic zone against flagrant or gross violations of international discharge regulations causing major damage or threat of damage to coastal State interests;

(d) a flag State right to pre-empt prosecutions for violations beyond the territorial sea by other States unless the flag State has disregarded its enforcement obligations or the violation has caused major damage; and

(e) a series of safeguards including release on bond of vessels, liability for unreasonable enforcement, and sovereign immunity.

With regard to the territorial sea, a major split remains. The other major maritime powers (USSR, Japan, U.K. and most Western Europeans) argue that the coastal State should not be authorized to establish construction, design, equipment or manning regulations more strict than international regulations. Many coastal States and the U.S. support complete coastal State authority subject only to the right of innocent passage. The U.S. view is already set out in domestic legislation in the Ports and Waterways Safety Act. The Third Committee text supports the U.S. view while the Second Committee text supports the maritime viewpoint, thus requiring later resolution of the issue.

The major issue remaining to be resolved is coordination of the Committees II and III texts on territorial sea jurisdiction. The coastal State rights to set manning, equipment, design and construction standards within the territorial sea will not see final resolution until such coordination has taken place.

B. Marine Scientific Research

Committee III completed the first article-by-article reading of the Geneva Single Negotiating Text on marine scientific research (MSR) and on Technology Transfer. The Chairman of the informal working group, Cornel Metternich of the FRG, repeatedly stressed that the purpose of the sessions was to obtain reactions to the SNT in order to aid Chairman Yankov in redrafting the text.

With these ground rules, the main focus of the marine scientific research discussions was Chapter III of the Geneva text dealing with research in the economic zone and on the continental shelf. The U.S. approach was that coastal State interests in the economic zone should be protected through a series of agreed obligations upon the researcher. Many developed countries sought consent for all

research in the economic zone. The Geneva text set forth a mixed regime in the economic zone requiring consent for resource-oriented research and an obligations regime for research not oriented toward resources. This distinction between categories of research came under attack by thirty-six developing countries who claimed such a distinction was impractical and that consent should apply to all research activities in the economic zone. Most other countries defended the distinction concept as the only practical basis for a compromise settlement on the question of MSR. In an attempt to find a reasonable accommodation, Secretary Kissinger stated a willingness to accept a reasonable distinction approach, subject to compulsory dispute settlement.

An important element of a regime for marine scientific research based on a distinction between resource and non-resource oriented research is the question of who decides the orientation of the research. Mexico continued to seek compulsory conciliation with the ultimate right in the coastal State to decide the issue. Many developing States who had attacked the proposal to distinguish between resource and non-resource oriented research indicated that the Mexican approach would make this distinction concept more acceptable. Many of the supporters of the distinction concept, on the other hand, said it was crucial to have disputed questions on the nature of the research subject to binding third-party settlement. There was no clear resolution of the issue in the informal meetings of the Committee.

Metternich, in his report to Chairman Yankov, referred to informal negotiations that had occurred during the session and offered the following personal conclusion:

(a) a compromise will not be reached on a text which required consent in all cases, nor in a text where consent is never required. A mixed regime subjecting some research activities to consent and some to an obligation regime appeared to be the only viable basis for compromise;

(b) while there was no agreement as to the complete list, it appeared that at least the following should require consent: resource-oriented research, although there was no agreement as to the proper terminology to describe this form of research; drilling or the use of explosives; and utilization of structures referred to in Article 48 of Part II;

(c) central to the regime was the question of dispute settlement with no compromise on this issue readily apparent.

The revised Single Negotiating Text, however, reflects a different approach from those discussed in the negotiation. It requires consent for all scientific research in the economic zone but provides that consent shall not be withheld unless it is resource oriented, involves drilling and the use of explosives, or the utilization of artificial islands or installations subject to coastal State jurisdiction. The new text also provides that disputes regarding research will first be referred to experts to aid the parties in reaching agreement, but if those efforts are not successful, it will be referred to the binding dispute settlement procedures set forth in Part IV.

C. Transfer of Technology

The discussion on transfer of technology was lengthy but basically inconclusive. Several attempts were made to ensure that the text reflected the view that transfer of technology was an obligation of developed States not subject to normal economic principles. Contrasted to this view was the approach that all transfer of technology involving technology in the commercial sector must protect the interest of both the recipient and the supplier of technology.

V. Settlement of Disputes

A. General Objectives

Effective provisions for the binding settlement of disputes arising from the interpretation or application of the LOS Convention are an essential part of a negotiated package. Without a provision for compulsory settlement of disputes, the substantive provisions of the Convention would be subject to unilateral interpretation and the delicate balance of rights and duties achieved in a Convention would be quickly upset. Secretary Kissinger emphasized the importance of this in his April 8 speech.

B. Background

An Informal Working Group on Settlement of Disputes was organized at Caracas, and at the end of the 1975 Geneva

session this Group sumbitted a text to the President of the Conference. Using that text and resolving some of the issues it left open, the President prepared and circulated a Single Negotiating Text on dispute settlement in July 1975.

In an effort to blend together the conflicting approaches which were discussed at Caracas and Geneva --one which would provide compulsory dispute settlement only for certain disputes; the other which would apply compulsory dispute settlement to all disputes --President Amerasinghe provided in his first text for a new Law of the Sea Tribunal to resolve disputes involving the interpretation or application of the Convention (unless the parties to the dispute agreed to arbitration or the International Court of Justice); he also provided for special procedures in the area of fisheries, pollution, and scientific research disputes and for various exceptions to compulsory dispute settlement, including one which deals with the pivotal question of dispute settlement in the economic zone.

C. Plenary Debate

Dispute Settlement was taken up in a plenary meeting of the Conference for the first time during the fourth session. In six days of debate, a wide range of views were expressed by seventy-two speakers. Each speaker acknowledged the need for a dispute settlement system, but discussion of the scope and competence of the system disclosed widely divergent viewpoints on basic details. Some States advocated a comprehensive system that would apply to all disputes arising out of the interpretation and application of the Convention. Some States supported a comprehensive system with a provision for limited and carefully defined exceptions from the jurisdiction of the system. And some States proposed that compulsory dispute settlement should be totally excluded from the economic zone, although many of those States also expressly acknowledged that navigation and overflight disputes in the zone should be subject to compulsory dispute settlement.

Many delegations recognized that disputes arising out of deep seabed mining activities, particularly disputes over contract matters, would have unique features, and accordingly supported specialized procedures for such disputes. Some favored a completely independent Seabed

Tribunal which would be an organ of the Seabed Authority with authority to make binding, final decisions regarding all disputes arising out of the activities in the area pursuant to Part I of the Convention. Others suggested that an appellate relationship should be established between the Seabed Tribunal and the Law of the Sea Tribunal.

Speakers in the plenary also discussed the structure of the dispute settlement system. Some States advocated arbitration as the sole mode of settling disputes; others advocated use of the International Court of Justice; and others supported the creation of a new Law of the Sea Tribunal (although some delegations opposed any new tribunal).

Some States advocated specialized procedures to handle disputes related to fishing, navigation, and research; other States advocated a system with general jurisdiction for handling all disputes. In the discussion of the type of forum or fora to be used, there was substantial support for a provision that would give a Contracting Party a choice among three tribunals (an arbitral tribunal, the Law of the Sea Tribunal, or the International Court of Justice). A Party's declaration at the time of ratification would determine the forum before which that Party could be brought by a claimant in a dispute.

At the close of the plenary debate, President Amerasinghe obtained approval for his proposal to produce a revised text based on the remarks in plenary and any suggestions subsequently submitted informally to him.

D. The Basic Issues

In the dispute settlement section of the Convention, the question of application of compulsory third-party dispute settlement in the economic zone is the most difficult and complex issue. States opposed to excluding compulsory dispute settlement from the zone contend that the Convention system must take account of both coastal and other States rights in the zone. The success of the conference will depend on designing a provision that will accommodate both coastal State interest in resource management discretion and the major rights and interests of other States in the economic zone.

E. Group of 77

The Group of 77 undertook a serious and detailed study of dispute settlement for the first time during this session. A twelve member "contact group" conducted extensive discussion and debate over a period of several weeks. A position paper was produced by this contact group for the Group of 77.

F. Revised Single Negotiating Text

The fundamental question of protecting the rights of coastal States and the rights of other States in the economic zone is treated in Article 18. Subject to certain exceptions including interference with navigation and overflight, the new Article 18 excludes from the Convention system disputes related to the exercise of sovereign rights, exclusive rights or exclusive jurisdiction of a coastal State.

The new text must be carefully studied. If the economic zone is not to become the functional equivalent of a territorial sea, the dispute settlement system must provide adequate protection for the rights of both coastal and other States.

THE THIRD UNITED NATIONS CONFERENCE
ON THE LAW OF THE SEA

New York March 15-May 7, 1976

U.S. Classified Delegation Report

Part I

BEGIN CONFIDENTIAL;

I. Summary

This report consists of the classified section of the Delegation report on the New York session of the Law of the Sea Conference. The unclassified report and relevant texts are being sent separately. This report contains a section on the negotiating trends and group politics at the Conference. It supplements and generally does not repeat material in the unclassified report.

A preliminary and cursory review indicates that the new informal single negotiating texts issued the last day move significantly in our direction on deep seabeds (Committee I) from the almost wholly unacceptable Geneva text; they stay about where they were in Committee II with no losses on the large number of satisfactory articles, and some useful changes picked up on straits, tuna, archipelagoes and scientific research, but with no change on the legal status of the economic zone; in Committee III, the texts move quite close to U.S. positions on pollution, but move away from us on scientific research; the texts move somewhat away from our views on dispute settlement in the economic zone in that the applicability to fisheries and scientific research is ambiguous, but navigation, overflight and environmental obligations in the zone remain clearly protected by binding dispute settlement procedures.

The next session (New York, August 2 to September 17) is likely to focus on major outstanding issues. However, agreement on the summer session was only achieved after U.S. intervention in selected Capitals and other efforts persuaded African Group to withdraw its opposition. The majority in all other groups, including the Arabs, favored a summer session, but were split to varying degrees, and were reluctant to oppose the Africans in the Group of 77.

A number of problems remain for the summer session. Those likely to be very contentious and difficult include:

1. Committee I: The issue of the composition and voting of the Council of the Authority remains to be

negotiated. In addition, many LDC's egged on by Algeria, believe the new text is a sell-out to the industrialized states, and will want it to "move back" in the direction of the earlier Geneva text. The Soviet, French and Japanese demands for a clause to prevent U.S. domination of deep seabed mining remain. Canada may attempt to rally nickel producers against the new text on protecting LDC land-based producers (Article 9).

2. Committee II: We have not obtained a change in the basic articles on the legal status of the economic zone. The question of access to fisheries of the economic zone of neighboring states for the land-locked and "geographically disadvantaged" remains.

3. Committee III: Problems can be expected in preventing further erosion on scientific research in the economic zone and ensuring binding dispute settlement. The issue of the right of the coastal state to fix anti-pollution construction standards in the territorial sea for foreign vessels remains unresolved; the Committee III text goes our way in permitting this, while the Committee II text does not.

4. Dispute Settlement: While there is growing sentiment for applying compulsory dispute settlement to interference with navigation, overflight and pollution in the economic zone, application to other issues in the economic zone (e.g., scientific research and fisheries) will be difficult.

5. Procedures: There was an inconclusive discussion at the final Plenary session on procedures for the summer session. (Many Delegates had not focused on the issue, and were tired and irritable.) While we and other moderates will seek sensible procedures that focus on and permit real negotiation on outstanding issues that lead to a timely ultimate decision on the treaty package as a whole, some conservatives (e.g., France) and certain hardline straits states may insist on consensus to the very end, while radicals (e.g., Algeria) seek premature item-by-item voting. (Oddly, however, Algeria emphasized consensus during the closing Plenary debate on procedures for the next session, which may indicate some uncertainty about how well the radicals will fare in view of Algeria's unsuccessful attempts to retain the Geneva Committee I text and prevent a summer session).
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II. Committee I (Deep Seabeds)

A. Tactical Situation

The basic tactical objective for the U.S. Delegation to the New York Session of the LOS Conference for Committee I was to dismantle the SNT of March 1975 produced at the Geneva session of the LOS Conference and replace it with a new set of texts more in line with the basic U.S. policy objectives. The Geneva SNT was prepared by Paul Engo, the Chairman of Committee I, in the last few days of the March session. The text was wholly unacceptable to the U.S. and most other industrialized countries and did not, in fact, accurately reflect the negotiations which took place in Geneva.

Our strategic approach to this session was in large part dictated by the overwhelming number of changes that had to be made to the Geneva SNT--changes that Engo insisted be negotiated with a representative number of delegations.

B. Secret Brazil Group

The U.S. took steps during the intersessional period to lay the foundation for a major revision of Part I of the SNT. The principal mechanism was the establishment of a small, secret group, with representatives from each geographic area, which in fact negotiated all of the new texts. This group, whose composition was known only to Engo, consisted of the U.S., Chile, Peru, Brazil, Mexico, Sri Lanka, Singapore, Jamaica, Kenya, Norway and France (please protect). The group met almost daily in the Brazilian Mission.

The procedure of the group was to negotiate compromise texts prior to the discussion of the issue in the informal meetings of Committee I. During the debate in Committee I, the various elements of the compromises were played out by members of the secret group so that the new compromise ideas could be publicly aired. Each member of the group was committed to publicly defend the new text in their respective regional and special interest groups.

With the groundwork laid, the secret group could provide Engo with the actual texts of each article. Following the Committee I debate of the issue, Engo issued the new texts in a series referred to as the PBE series. Engo

described these drafts as his own assessment of the emerging consensus. Engo did not permit any debate in Committee I on the new texts after they had been issued. As part of the overall package, Engo also issued the texts that had been negotiated at the February intersessional meeting of Committee I with only the minor changes and only those to which the secret Brazil Group agreed. The February texts had been developed by the same group.

The basic approach of the secret group was to work out a package compromise for the land-based producers (Chile, Peru), and Brazil, who have constituted the leadership among the LDC's in Committee I. They sought an article establishing protection for land-based production of seabed minerals. In return for this, these countries undertook to try to support the issues of concern to other members of the group, in particular those of importance to the U.S.

Brazil's major concern was to ensure that the treaty contained a provision for a mine site banking system. Under a banking system, each contractor would be required to provide the Authority with prospecting data for an area equal in size to the area let for contract. The Authority would award one site to the applicant and reserve the other. These sites would then be made available to developing countries or the Enterprise. In this respect Brazil was at odds with many LDC's, some of whom believed that the banking system will benefit only the most developed LDC's by giving them a chance to undertake deep seabed mining in the banked areas. This benefit to the advanced developed LDC's countries is resented and feared by the LDC's who feel they cannot take advantage of the banking system.

Mexico, although a regular participant in these meetings, did not take an active role until the last days of the session. It then became evident that Mexico opposed the Brazilian banking system and felt that the land-based producers and Brazil had agreed to too many concessions to the U.S. in return for elements in the treaty which met their narrow interests (protection for land-based producers in the case of Peru and Chile, the banking system in the case of Brazil). In violation of the understanding within the secret Brazil Group, Mexico's representative attacked the compromise texts in the Latin American Caucus and in the meeting of the Group of 77.

Kenya was not an active member of the secret Brazil Group but did cooperate fully and supported the texts in the Group of 77. Singapore's principal concern was to be helpful in seeking compromises so that the deep seabed issues would not prevent agreement on a final treaty which Singapore wanted. Norway's role was similar. On two issues, however, Norway had strong substantive interests: strengthening the treaty in regard to protection of the marine environment and strengthening Norway's role in the future International Authority.

Because the secret Brazil Group had to work very fast in order to make the very large number of amendments required to satisfy the United States, the group decided that at this session of the Conference it would not be possible to include Algeria and India whose national positions and representatives could easily have stalled all efforts to agree on new texts. Moreover, the USG had previously considered direct negotiations with Algeria to be fruitless, and consequently attempted to isolate them.

C. Group of 77 Reaction of Committee Texts

The Engo draft articles met with very strong resistence from many LDC's who clearly felt that they went much too far toward the U.S. position on virtually every issue. This reaction was particularly acute among those countries which had been formerly active but which took no part in the Brazil Group. There was a concerted effort, led by Algeria, but with active support of Ghana, to reject new texts entirely. Despite this effort the texts were incorporated virtually without change into the Revised Single Negotiating Text issued on the last day of the Conference.

D. Group of Five

Effective coordination in the Group of Five was made difficult because of two substantive areas of disagreement: compulsory dispute settlement and the quota system.

1. Group of Five - Dispute Settlement

On this issue, we were able to avoid an open dispute by tactically supporting a compromise suggested by the United Kingdom which attempted to take into account both the U.S. position supporting a permanent seabed

Tribunal and the position of the French and U.K. which favored an ad hoc arbitration system. The issue was not resolved during this session and is among those issues which Committee I as a whole will consider at the next session.

2. Group of Five - Quota System

An even more difficult problem within the Group of Five is the quota system (a system which would limit the access of an individual state by some arbitrary formula as to prevent it from "dominating" or "monopolizing" deep seabed). In varying forms, the U.K., France, Japan and the USSR support a system which would prevent automatic access by the U.S., at a certain stage, to seabed resources. Whether through a set percentage of contracts or a set number of contracts, an arbitrary limitation would be established. France and the Soviets may wish to protect their domestic production and want to preserve their future rights to mine the seabed. The Japanese appear to have limited their concern to cases of competing applications for the same mine site. A further Soviet motivation may be political and military concern over U.S. domination.

In an effort to reassure them, the Group of Five was given a paper prepared by the U.S. which establishes that the number of prime mine sites is around 300-400 and, therefore, there is no basis to the fear that the U.S. will premanently dominate deep seabed mining as a result of its technological lead. France and the U.K. have since based their support for a quota system more on the basis of the limited capital market rather than on any geological limitations on mine sites. The Soviets have given up their one-State, one-site approach but continued to press for some system which would effectively limit automatic U.S. access to seabed resources. Serving as rapporteur for the Group of Five, the U.K. has prepared several drafts of a quota or anti-dominant proposal. This was done at the urging of the U.S. in order to limit the scope of this dispute and prevent it from emerging in the Committee I debate, although the U.S. continued to strongly oppose any form of quota system. The new SNT refers to the quota issue in Annex I and notes it remains to be further discussed in the future. Intersessional work on this problem will be necessary.

3. Group of Five - Revenue Sharing

One issue where a major effort was made to coordinate views within the Group of Five concerned the revenue

sharing (financial arrangements) provision in Annex I. The Group of Five position on this issue was coordinated before the text was negotiated in the Brazil Group.

4. Group of Five - Other Problems

Unlike other sessions, there was no substantial effort within the Group of Five to coordinate tactics. This was due to the fact that the actual tactics in Committee I had been coordinated in the secret Brazil Group, the existence of which was unknown to most members of the Group of Five.

A primary problem within the Group of Five was the Soviet Union, which was at no time particularly cooperative. From the first, the Soviets resisted a regular schedule of meetings and required approval of the agenda before agreeing to meet. Partially as a result, the Group of Five failed to play a useful role in the negotiations other than to serve as an unwitting forum for playing out compromises worked out in the secret Brazil Group.

E. Substantive Issues

The U.S. had seven major substantive objectives in regard to amending the Single Negotiating Text of March 1975.

1. Limiting the Powers and Functions of the Authority as a Whole

It was the U.S. objective to provide the Authority with the power to regulate only the activities of exploration and exploitation of the deep seabed resources according to the provisions of the Convention. Specifically, it was necessary to prevent the Authority from having any control over military activities and scientific research. The two critical articles involved were Article 1 (which defines activities in the Area and Article 10 (which determines the role of the Authority in regard to marine scientific research). Both of these articles in the revised SNT are essentially the same as in the U.S. amendments. Our concern with ensuring that the powers of the Authority are circumscribed made it necessary to include language that is less than optimally clear on the powers of the Authority to regulate pollution resulting from processing above the mine site, but we believe the language is properly interpreted to give to the

Authority this power. This was our objective.

2. Economic Implications for Land-Based Producers

It was the U.S. objective to neutralize the LDC land-based producers, who had in the past been the chief and most effective opponents of a successful treaty which protected U.S. interests, by agreeing to an article which would appear to be responsive to their needs but which would deny to the Authority any direct price and production control. Article 9, together with Annex I, paragraph 21, in the revised SNT, provides for a temporary production limitation geared to the growth rate of the nickel market (i.e., seabed production of nickel cannot exceed the projected world growth rate of nickel on a cumumlative basis). According to best U.S. estimates, this will, in fact, have no actual impact on seabed mining during the period provided for. Further, Article 9 limits the Authority to the uniform and non-discriminatory implementation of any further commodities agreements and allows the Authority to participate in any commodity conference only in respect of its production in the seabed (i.e. by the Enterprise). Finally, there is a general, unspecific reference to a compensatory system of economic adjustment assistance in respect of the adverse effects of a substantial decline in the mineral export earnings of LDC's.

In the last few days of the Conference, several key land-based producers informed the U.S. delegation that Article 9 in fact might not be completely satisfactory. Canada made a strong approach, objecting strenuously to Article 9 on the grounds that land-based producers of nickel would be at a disadvantage compared to seabed producers. U.S. and Canadian representatives agreed to follow up with further technical talks.

The Brazilian and Chilean representatives, both of whom had agreed earlier to the text of Article 9, indicated clearly that their governments were having second thoughts about the formula used in Article 9. Presumably, this is a result of more careful analysis in their capitals showing that the formula for production limitation would in fact have no practical effect on seabed production.

3. A Non-discriminatory System of Access

A U.S. objective is to achieve a system of guaranteed, non-discriminatory access for U.S. firms to the mineral resources of the deep seabed. The provisions in the new SNT which deal with these points are contained in Article 22 and Annex I. The SNT recognizes the principle of a parallel system of exploitation, i.e., a system in which both the Enterprise, acting directly on behalf of the Authority and individual firms under contract to the Authority, could exploit the seabed under essentially the same conditions. This is in sharp contrast to the long-held Group of 77 position to allow access to seabed resources only through the operating arm of the Authority, i.e., the Enterprise. The new text provides that the Authority must issue contracts to qualified applicants subject to the terms and conditions outlined in the treaty and in Annex I. Annex I spells out in some detail these terms and conditions and the criteria which the Authority will apply in elaborating these regulations and procedures and in implementing them. Taken together, Article 22 and Annex I set out a structure of uniform rules and requirements which, if met, would lead to the issuance of a mining contract. The articles reduce discretion in the Authority to a minimum in developing the rules and regulations, in applying them and in issuing the contracts. The ability of the Authority to develop arbitrary rules and regulations or to apply these rules and regulations in a subjective discriminatory fashion has been severely restricted. Further, the articles provide that the Enterprise, as a commercial operator, is subject to the same regulations which govern mining operations by States Parties and their nationals.

The system for issuing contracts is so designed that there are detailed procedures for reviewing the contact applications (work plan) as specified in the Annex and the rules, regulations and procedures adopted by the Authority. The Technical Commission is given responsibility to supervise operations with respect to activities in the Area, including reviewing work plans. After review by the Technical Commission, work plans are sent to the Council for approval. Procedures and the acts of the individual organs of the Authority are subject to review by the Tribunal.

4. Revenue Sharing

Annex I contains for the first time the outlines of a formula for revenue sharing (paragraph 9d). The Annex contains two possible approaches to this issue. Approach A was negotiated before hand in detail and reflects the U.S. and other industrialized countries' position. At virtually the last minute, Engo was persuaded to include an additional revenue sharing formula, appearing as Approach B, which had been devised by the Secretariat and which allows the Authority to determine the nature of the revenue sharing obligation. Although the specific figures are left blank for the time being, there has been acceptance of the principle that a formula must be included in the Treaty. The Authority would therefore not have broad discretion to negotiate individual formulas with mining contractors on a case-by-case basis and the formulas contained in the treaty would be based on the principle of assuring a reasonable return to the contractor. This is a major step forward. Because of the complexity of this problem, there was very little discussion in detail but there was also no serious objection to the principle contained in paragraph 9d. The only articulated objection was to the grace period included in the formula. The formula provides for no revenue sharing obligation with the Authority between the time production begins and the time the contractor begins to make profits at a threshhold level.

5. Dispute Settlement

Despite differences referred to above within the Group of Five in regard to dispute settlement, there was a general trend among the LDC's supporting the establishing of a permanent Tribunal which would have compulsory jurisdiction of disputes regarding Part I of the Treaty, and relating to activities in the Area including disputes between Parties and organs of the Authority. There also was agreement that individual contractors would be able to bring actions before the Tribunal. However, the Statute of the Tribunal, which appears as an Annex to the Treaty text and was not negotiated, does not reflect this approach and is thus inconsistent with the SNT. The Statute and the Treaty texts will have to be reconciled at the next session.

6. Powers and Functions of the Assembly, Council and other Organs

It has been the U.S. objective to minimize the overall powers and functions of the Authority, and to minimize the specific powers and functions of the Assembly vis-a-vis the Council. On few other issues have we met as much resistance. The general position of the LDC's has been to give the Assembly plenary and virtually unlimited policy-making powers. The new texts provide for a balance between the powers of the Assembly which is identified as the supreme organ of the Authority, and the powers of the Council, which is specifically identified as the executive organ of the Authority.

7. Voting and Composition in the Council

It has been clear that fundamental to a successful treaty on deep seabeds is a satisfactory resolution of the issue of the composition of the Council and its voting arrangements. The Geneva SNT text, carried over in the revised SNT, is unsatisfactory to the U.S. and to most industrialized countries. We have indicated publicly our concern with this issue and our intention to propose a new article at the appropriate time. Toward the end of the New York session, the U.S. delegation circulated to members of the secret Brazil Group and to the Group of Five the text of a new article on Council composition and voting (Article 27). The new U.S. Council article combines the collegial and concurrent voting system contained in the U.S. amendments of December 1975 with a weighted voting system for certain specified issues such as those contained in Article 9 and suspension of members of the Authority. In presenting this draft text, the U.S. representatives made clear that this text was tentative and that we were not certain that we wished to retain the collegial system in the new article. It is generally understood that the Council article will be a major substantive issue to be dealt with at the next session of the LOS Conference.

F. Conclusion - Tactics

The operations of the secret Brazil Group and the compromises reflected in Article 9 neutralized the land-based producers who had been the most effective opponents of U.S. objectives and of the successful conclusion of an LOS treaty. These countries now perceive that their national interests will be served by a treaty along the lines reflected in the new SNT. However, as noted above, some land-based producers are now becoming

convinced that Article 9 does not go far enough in protecting their interests and will probably try to revise the formula. In addition, Canada, the major land-based producer of nickel, has expressed strong objection to the specific formula which, it believes, will not protect its interests.

The chief opposition to the approach reflected in the new SNT will probably come from those countries which have an ideological commitment to a new economic order for the seabeds--one in which the LDC's have exclusive and unqualified powers to control activities on the seabed. This group includes the traditional extremists such as Algeria (with the support of a number of Arab States) and more moderate leaders, such as Mexico and India. They see the new texts as constituting fundamental and far-reaching concessions to the industrialized countries on virtually every question at issue.

On the last day of the session, the members of the secret Brazil Group consulted informally with a view toward agreeing on procedures for negotiations in the summer session. While nothing is finally agreed at this writing, the consensus among the members was to recommend to Engo the creation of a negotiating group of 50 chaired by Vindenes of Norway (a member of the secret Brazil Group) and the creation of a public sub-group to do the "drafting" (read "negotiating") for the group of 50. This sub-group would include, in addition to the secret Brazil Group members, such countries as Algeria, Ghana, India, Egypt and one or two Africans who support Engo. The Group of 50 would then turn over negotiated texts to the First Committee. This procedure would of course not include a procedure in the sub-group which would allow an Algerian or Indian veto. Instead, the members of the secret Brazil Group, with its supporter, would command a substantial majority and recalling its negotiated commitments inter se would ensure that they were reported to the Group of 50 with only minor changes. Since this arrangement will also insulate Engo from the criticisms leveled at him at the end of this session due to resentment against the procedures followed at the March session of the Conference in Committee I, we would expect him to adopt it.

G. Conclusion - Substance

The Delegation considers that the new Single Negotiating Text goes far toward meeting most of the major U.S. objectives in the Committee I negotiations.

Article 1 now limits the Authority's regulatory power to exploration and exploitation and precludes any regulation of other unrelated activities, thus protecting our defense and security interests. Article 10 now limits the power of the Authority to promoting and encouraging the conduct of scientific research in the Area in contrast to being the "center for harmonizing and coordinating scientific research" as provided in the Geneva SNT. Article 9 represents a compromise for meeting the concerns of the land-based producers of seabed minerals while imposing no effective limit on industrialized countries' access to seabed resources. Article 22, coupled with the Annex, provides an all but automatic system of access through a required granting of a contract if objective criteria and conditions established in the Treaty are met. The powers of the Assembly have been limited to prescribing only general policies. The Council is now the executive organ with the power to prescribe specific policies.

It is clear from the very strong and critical reaction from the LDC's to the new Committee I texts that there will be a major move within the Group of 77 to modify these new texts substantially so that they are much closer to the positions reflected generally in the Geneva texts. It will be necessary for the U.S. and other countries with similar interests to undertake a major effort to obtain widespread agreement among the moderate developing countries on this text.

Clearly, a number of crucial issues remains to be settled: most important, the composition and the voting system in the Council, the quota system and the funding of the Enterprise. These items, as well as a number of other remaining issues, including environmental issues, will require a careful intersessional review, and a major negotiating effort at the next session.

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III. COMMITTEE II (Territorial sea, Straits, the Economic Zone, the Continental Shelf, High Seas, Archipelagoes, Land-locked States, Islands, and Enclosed and Semi-enclosed Seas.)

A. General Evaluation

1. The Negotiating Context

The Committee II negotiation during the fourth Session of the LOS Conference centered upon detailed consideration of the substantive subjects covered in Part II of the Informal Single Negotiating Text (SNT) issued at the end of the previous session in Geneva. These substantive areas include the territorial sea, straits, the exclusive economic zone, the continental shelf, the high seas, land-locked States, archipelagos, islands and enclosed and semi-enclosed seas. The session produced a significant advance toward the goal of widely agreed provisions on Committee II subjects though issues remain to be resolved. A broad base of support was revealed for the Committee II text.

2. Procedure

The procedure adopted by Chairman Aguilar, an article-by-article discussion of the entire Committee II text before the full committee meeting in informal session, was awkward, frustrating, but necessary. It achieved two objectives:

a) it defused any attacks on the Geneva Single Negotiating Text provisions on the economic zone and straits based on the procedural ground that certain delegations had not participated in the groups negotiating those provisions, and;

b) it clearly identified contentious issues and the relative support for opposing positions, thus setting the stage for final negotiations.

The so-called "rule of silence", adopted to expedite the work of the Committee by making it unnecessary for a delegation to speak in support of the Geneva SNT, created initial confusion and may, in fact, have generated debate. However, in view of the fact that it operated in favor of the Single Negotiating Text it was more often beneficial than not to the U.S. in protecting its national interests. It did cause problems for delegations seeking to gain acceptance of amendments, even if purely technical.

3. Attainment of U.S. Objectives

(a) The opposition by certain strait States (including the Philippines, Indonesia, Malaysia, Egypt, Spain, Yemen, Democratic Yemen, Oman, and Greece) and others such as China and Somalia remains, but was somewhat moderated and the base of support for the straits articles appearing in the Single Negotiating Text, with only technical modifications, remains in tact after its first real test before the entire Conference. Private conversations revealed that Malaysia and Egypt may withdraw or significantly moderate their opposition to our position on straits connecting two parts of the high seas. The slight moderation of Spain's public stance was helpful in disrupting the unity of the straits states.

(b) Navigation issues negotiated in private consultations in Geneva and picked up in the Single Negotiating Text remain essentially untouched after full Conference review.

(c) The Geneva texts negotiated in the Evensen group on the economic zone with the exceptions noted below, remain widely accepted.

(d) Stronger support has been generated for the U.S. view of the high seas nature of the economic zone. Although the new text does not reflect our position, the issue remains contentious and subject to negotiations, as indicated in the Chairman's introductory note.

(e) A satisfactory resolution of the limit of the continental shelf has been accepted by the broad-margin states, and the U.S. revenue-sharing proposal attracted growing support and may well be accepted as part of an overall solution to the shelf problem at the next session. Our basic structural approach to revenue sharing is now in the text, but the LDC exception remains.

(f) Archipelagic states have accepted, except for the Philippines and Indonesia, the Geneva SNT formula with respect to archipelagic baselines and archipelagic passage. References to archipelagos of continental states have been eliminated.

(g) Fisheries articles, except as noted below, have received general acceptance.

4. Problem Areas

(a) Territorialist support for total coastal State control in the economic zone, except for rights of navigation, overflight, and the laying of pipelines and cables, remains strong and may be attractive to certain other states for tactical or other reasons. Thus, we will continue to have difficulty achieving our objectives regarding the status of the economic zone.

(b) The land-locked and geographically disadvantaged States have demonstrated a cohesiveness of purpose in seeking access to the living resources of the economic zones of their neighbors, as well as a share of the revenues from the exploitation of the non-living resources of the continental margin. These states (approximately 50 in number) have also supported the high seas nature of the economic zone and resisted restricting freedoms of navigation. Affected coastal States reacted strongly in some cases adopting a more territorialist stance. While the question of land-locked and geographically disadvantaged State access to resources should not directly affect basic U.S. LOS interests, the resolution of the issue is important to the success of the Conference.

(c) Not all opposition to the straits articles has been eliminated.

(d) It was not possible, despite two separate attempts at private consultations, to achieve agreement on an article on highly migratory species. Efforts by the U.S. and others to strengthen the concept of international management of such species appeared to receive a more sympathetic hearing this session than last. A change in the tuna article in the new text moves it in the U.S. direction.

(e) Certain other special-interest areas, involving primarily the affected States, need further elaboration. These include islands, and enclosed and semi-enclosed seas.

(f) The problem of treaty benefits accruing to other than States parties (Article 136 of Geneva SNT) has not been resolved.

(g) The question of whether coastal States should have authority to apply design, construction, manning and equipment regulations more stringent than international regulations to foreign vessels in the territorial sea (Article 18.2) is unresolved.

5. The Future

It is unclear what future procedures will be. Having isolated the problem areas and tested the support for or against each issue, the Chairman has revised the text. But questions remain as to the status to be given to the new text and the use to which it will be put. A likely speculation would be that there will be intensive negotiation on contentious issues. The number of such issues is small; further general debate on Committee II articles is not needed. With intensive negotiations early in the next session, most of these issues can be resolved by acceptable compromise formulas for inclusion in the final Committee II package deal.

B. Comments

1. The Territorial Sea

While there is general acceptance of the Single Negotiating Text in this area, these articles were used as a spring-board for opening the debate with regard to the juridical nature of the economic zone, with Peru, India and Brazil spearheading an effort to increase coastal State control in the zone. Ecuador proposed a substitution of 200 miles for 12 miles, receiving support from Somalia, Peru, Brazil, Albania, Uruguay, and the PRC. Both Albania and the PRC exhibited the normal tendency toward anti-superpower polemics as had existed in prior sessions.

The Philippines made a vain attempt to press for vast historical seas which it has previously proposed. Bangladesh repeated its proposal for locating baselines offshore. The PRC sought to eliminate using low tide elevations with lighthouses or other similar structures for the drawing of baselines on the grounds that only the developed countries could afford them. This effort reflected China's general effort in the Conference to assert a position of leadership among developing countries by seizing upon issues on which developed and developing might split.

The Greek/Turkish problem came to light during the discussion of delimitation of the territorial sea between opposite or adjacent States (Article 13). Turkey proposed delimitation based upon equity while the Greek view placed stress on the principle of equidistance.

2. Innocent Passage

The most debated issue with respect to innocent passage in the territorial sea concerned the question of whether the list of activities considered prejudicial to the peace, good order or security of the coastal State should be exclusive. The advocates of making the list non-exhaustive (particularly the Latins) sought to add "inter alia" and other similar amendments. Canada again sought to add acts or omissions leading to grave and immiment danger of pollution to the list. Another difficulty was injected by India in a proposal restricting innocent passage to vessels other than warships, nuclear-powered ships, or ships carrying nuclear substance, but this proposal did not gain widespread support.

The PRC sought a distinction between military and non-military submersibles with prior authorization required for the former. This was supported by some Latins, the Arab group, Indonesia and the Philippines.

Article 18 (2), dealing with restricting the right of a coastal State to make laws concerning design, construction, manning and equipment standards of vessels in the territorial sea, received attention. Canada proposed deletion of the paragraph, supported by the United States and others. A proposed Australian amendment would permit coastal States to manage marine traffic.

Article 20, regarding documentation of nuclear-powered ships and ships transporting nuclear substances, became a focus for several States, led by the PRC, to seek prior authorization and notification with respect to the passage of such vessels.

In general, most limitations on innocent passage that were proposed originated with or were supported by Arab, African or Latin American States. India, Peru, Pakistan, Algeria, and China took the hard line. Austria, Switzerland, and Zambia, representing the land-locked position, lent support for our objectives on navigational issues.

3. Straits Used for International Navigation

The articles in this part received wide general acceptance in their first test before the Conference as a whole. The most substantial efforts at amendment came from the Philippines, while Malaysia called for deletion of the entire part pending further consultations among interested States. Support for such positions came from Oman, Greece, Yemen, Democratic Yemen, China, Egypt, Somalia and others. Spain, in introducing a new set of amendments, adopted a more moderate stance, although it continues to oppose submerged transit and overflight even under a more liberal regime than innocent passage. Indonesia questioned the existing text but did not propose or suggest amendments to it. Resistance continued to certain special provisions, including Arab States' opposition to non-suspendable innocent passage in the strait of Tiran. The PRC continued to press for exclusion of warships from the straits regime, and the issue of prior authorization for warships and other special categories of vessels was pressed by Yemen.

While the attacks on these articles were strident, they were few in number and the debates indicate that the obvious adherence to the SNT was of considerable influence in eliminating changes damaging to our interests. We were successful in preventing a renewal of Chilean and Norwegian attacks on the straits articles as they affect internal waters by agreeing to clarifying amendments cleared with the Group of 5 and others affected (Argentina and Singapore). Canada was also accommodated in this effort, and goes along with the change, but has not yet endorsed the straits articles, and was consistently sniping at them.

4. The Exclusive Economic Zone

Discussions of this part were extensive and presaged the general debate on the juridical character of the economic zone in connection with Article 73 (high seas). With respect to this part, the United States concentrated heavily on seeking amendments to Articles 45, 47 and 49. The debate on Article 45 centered upon whether or not to qualify coastal State jurisdiction with respect to pollution and scientific research with the latter being the crux of the problem. The proposals ranged from the extreme territorialist position

(Uruguay) for maximum coastal State control, to the extreme land-locked position (Zambia) in favor of diluting coastal jurisdiction even over resources by providing for access by land-locked states. These extremes made it possible for the United States to suggest a moderate solution with cross-references to the appropriate parts of the Committee III text, but no change was made in the Single Negotiating Text.

The discussions also reflected the cohesiveness of the land-locked and geographically disadvantaged States who consistently opposed any references to the "exclusiveness" of the zone. This was strongly resisted by an African, Arab, Latin coalition headed by Peru, who insisted that if the word "exclusive" were to be deleted, "national" should take its place. Austria proposed a draft strengthening the rights of land-locked States in Article 45. India, reflecting its hard-line position on coastal State jurisdiction, proposed that Article 48 be amended to provide for designated areas in which the passage of foreign vessels through the economic zone could be restricted.

The U.S. proposed deletion of the consent article on scientific research on committee jurisdictional grounds, but the proposal was met with strong opposition. We succeeded, as the new text has in fact a cross-reference to the scientific research chapter.

Support for significant changes in the basic fisheries articles dealing with coastal stocks did not develop. The anadromous article was amended only in ways to return it to the Evensen text by prearrangement among the States concerned and through the cooperation of Iceland. Informal efforts to negotiate the tuna article, however, were unsuccessful. A meeting of the States involved in fishing the Eastern Pacific stocks collapsed when Peru insisted on reversing progress which had been made during intersessional talks with Ecuador and Mexico. A second attempt with a broader number of States from different regions was also not successful in advancing a solution. In the committee, an attempt was made by Ecuador to delete the article and eliminate special treatment for tuna. Senegal publicly supported Ecuador, though indicating more flexibility in private; but the attempt did not attract substantial support. The efforts of the U.S. and others to strengthen provisions on the need for international management of highly migratory species appeared to gain increased sympathy. The new text moves in this direction.

The debate concerning the rights of land-locked and geographically disadvantaged States with respect to the living resources in the economic zones of their neighbors was inconclusive, as were the efforts of Minister Jens Evensen of Norway in private consultations held on this subject for the purpose. The land-locked effort to gain equal access to fisheries, whether or not there is a surplus above the harvesting capacity of the coastal State, was met with strong coastal State resistance. Difficulties were also encountered in defining "geographically disadvantaged" and "regions." While Evensen had produced a new text, it retains a coastal bias and the issue is clearly unresolved, as stated in the introduction to the new text.

Delimitation debates paralleled those with respect to the territorial sea. It seems apparent that neither those States supporting equidistance as the sole criterion for delimitation nor those seeking to discard it entirely will prevail. The new text tilts further away from equidistance than the earlier text. The Canadians immediately accused us of being responsible for this; we assured them we had remained completely out of the issue, and were under instructions not to inject the U.S.-Canada boundary dispute into the negotiations.

5. Continental Shelf

Informal negotiations among broad margin States, including the United States, reached an agreement on previously outstanding problems regarding the precise definition of the outer limit of the continental margin where it extends beyond 200 nautical miles from the coast. The solutions included acceptance of two alternative criteria for determining the outer limit: the first based on a specified distance outward from the foot of the continental slope (the "modified Hedberg" formula); and the second based on a combination of distance and depth of sediment. The proposal, tabled by Ireland, drew significant support. Though the Irish proposal was not included in the new SNT, there are clear indications that the Committee II leadership is favorably disposed toward it and that further negotiation can result in the emergence of broad support for it.

The United States proposed a sliding-scale formula for revenue-sharing on the margin beyond 200 miles. The proposal, calling for increasing percentages of the value or volume of the resource at the site after a period of five years to a maximum of five percent, received substantial but not majority support, and is included without specific figures in the new text. Australia and Argentina maintained public opposition to revenue-sharing but privately showed some signs of flexibility.

In sum, the package of the definition of the margin coupled with the U.S. revenue-sharing formula appeared to gain considerable support. The margin boundary review commission, also included in the Irish draft, faces significant opposition including that of the USSR.

The United States proposed a reference to the rules of international law in Article 63 ostensibly to make clear that existing continental shelf rights would carry over to a new treaty; in fact, we wished to try to provide some basis for bringing expropriation cases under the LOS treaty. We got virtually no support.

Mexico, with a number of supporters, proposed that no State be entitled to emplace "any military devices or any other installations" on the shelf without the consent of the coastal State.

6. High Seas

The U.S. chose Article 73 as the major battlefield for the issue of the juridical nature of the economic zone. Considerable groundwork was laid and coordination was carried out with numerous delegations. The United States opened the debate by proposing that the high seas begin at the outer limit of the territorial sea, "provided that the provisions of this part shall apply to the economic zone only insofar as they are not incompatible with provisions of Part III." Approximately forty States strongly supported this approach, while about an equal number insisted upon making it clear that the economic zone was sui generis, that is, neither high seas nor territorial seas, but retaining express reference to the freedoms of navigation, overflight, the laying of cables and pipelines and other internationally lawful uses

related to navigation and communications. Australia made a compromise proposal making clear that the economic zone is not high seas with respect to the exercise of coastal State rights provided for in the convention. Canada also proposed a similar compromise, but the Canadian text would retain the exclusion of the economic zone from the high seas. Though the compromise proposals received some favorable comment, they did not attract many from the group of coastal States pressing for the sui generis nature of the economic zone, the latter maintaining a strong and generally unified position during the discussions. While we did not achieve a change in the new text, the extensive Chairman's note on the issue clearly identifies it as a major one for further negotiation.

7. Living Resources Beyond the Economic Zone

Canada, pressing for a long-held position, sought to have amendments accepted which would extend the influence of the coastal State with regard to fisheries beyond 200 miles on the grounds that high seas fisheries impact upon the stocks in the economic zone. The EC-9 sought provisions for cooperation through appropriate regional, sub-regional or global fisheries organizations in developing high seas management and conservation goals. Generally speaking, however, the articles received tacit support as written.

8. Land-Locked State Access to the Sea

The land-locked States called for the right of free transit through the territories of transit States for access to the sea under terms and conditions set by agreement. Switzerland made the land-locked proposal. This was resisted by Iran, and by a number of other States who urged reciprocity. Peru proposed deletion of the final article dealing with access to the resources. No major amendments appeared to attract the necessary support for change.

9. Archipelagoes

The United States, in proposing deletion of the title heading to Section 1, triggered a debate over the question

of whether this part of the Geneva SNT should apply only to island States, and received significant support. India, Spain and others said ocean archipelagoes belonging to continental States should be given identical treatment but gained little support. The new text is changed to reflect the U.S. view in this regard; it applies only to island nations. With respect to the number and length of archipelagic baselines, as well as the width of archipelagic sealanes, the pressure against the Geneva SNT position came primarily from the Philippines with Indonesian support. By and large, the U.S. position drew the support of other archipelagic States. Debate on the issues of archipelagic passage, however, raised the question whether such passage should differ from the rules for transit passage through straits. The Philippines and Indonesia raised further questions regarding special rules governing the transit of warships and overflight, without substantive support even from archipelago claimants such as the Bahamas, Fiji, and Papua New Guinea. Malaysia proposed State liability for loss resulting from pollution from all vessels. Indonesia, Malaysia and Singapore made joint proposals to preserve rights of immediate neighbors in waters of archipelago States.

10. Islands

The primary issue regarding islands, in addition to delimitation problems, was the Geneva text's provision that rocks incapable of sustaining human habitation or an economic life of their own should not be entitled to an economic zone and continental shelf. Tonga proposed deletion of this provision, supported by the U.S. and several other delegations, but it remains in the revised SNT.

11. Enclosed and Semi-Enclosed Seas

The issues set forth in these articles derive from and center upon the problems of specific marine regions such as the Baltic or Mediterranean. The definition included in the text would also include the Caribbean as a semi-enclosed sea. The bulk of the amendments proposed centered on either the duty to cooperate among littoral States or on efforts to imply that such States have special rights with respect to third States. The Netherlands on behalf of the EC-9 proposed

amendments designed to deal with their own special problems, as did Turkey, Finland, Denmark and Yugoslavia. The U.S. indicated that the articles as written were about as broad as could be accepted without amendment, and that any significant changes might cause us to press for deletion of the part. There was no indication of support for such changes. The new text softens the duty of coastal States to cooperate with each other in these areas.

12. Territories Under Foreign Occupation or Colonial Domination

Article 136 of the Geneva text provides that resource rights of territories under foreign occupation or colonial domination, UN Trust Territories, and Areas administered by the UN, vest in the inhabitants of such areas to be exercised by them for their own benefit. The Arab States, headed by Egypt, made a strong effort to insert a specific reference to liberation movements recognized by the League of Arab States or the OAU. Several States, led by Barbados and New Zealand, proposed the deletion of the reference in paragraph 2 to suspension of resource rights in the event of a dispute over the sovereignty of a non-self-governing territory until resolution of the dispute, but this suggestion received substantial opposition. The U.S. made a strong statement against the existing text, and proposed a new article that adds associated States, territories and commonwealths not fully independent to the list, and provided that coastal State resources rights in the coastal areas are to be exercised for the benefit of local inhabitants as prescribed by the UN Charter, international law, and applicable agreements Cuba attacked the U.S. amendment because of the intent to expressly cover Puerto Rico, thus eliminating the colonial domination and foreign occupation argument with respect to Puerto Rico.

Article 136 remained in the revised text, with only a change in paragraph 2. However, it is now designated as a "transitional provision," not a numbered treaty article; and its propriety is implicitly questioned in the Chairman's introductory note.

13. Land-Locked State Access to Marine Resources

A group of selected States including land-locked, geographically disadvantaged and coastal States, met informally under the guidance of Minister Jens Evensen of Norway to seek a solution to the resource access problems problems posed by Articles 57 and 58 of the Single Negotiating Text. The most difficult problems centered upon the questions of whether access to fisheries was to be granted on an equal basis to nationals of neighboring coastal States or be limited to the surplus, whether a distinction should be made between treatment of land-locked and geographically disadvantaged States, and whether developing States should receive preferential treatment over developed States. At issue also were the definition of "regions" and "geographically disadvantaged." No agreement was reached within the group, although Evensen drafted a revised set of articles.

IV. Committee III - Pollution and Scientific Research

A. Protection of the Marine Environment

The unclassified section indicates the present status of this issue while this section points out major possible future problems.

The basic settlement on vessel-source pollution, the most contentious of the pollution issues, was negotiated in Vallarta's (Mexico) small group and in a small Norwegian consulting group (U.S., U.K., USSR, Canada, Norway, India, Kenya, Mexico, and occasionally Brazil). There are some major outstanding problems in the general solution on vessel-source pollution. First, despite efforts by the U.S. and other countries and by Chairman Yankov, Chairman Aguilar of Committee II has been unwilling to delete the article restricting coastal State regulation-making authority in the territorial sea. Many maritime States, and particularly the U.K., are unwilling to move on this issue. Because of the substantive nature of the issue, it may well not be possible to reach a compromise on the issue.

A second problem is that some countries, notably India and Australia, continue to push for a right to unilaterally establish discharge regulations in special areas of the economic zone which are more strict than the international regulations. While they appear to be in a small minority on this issue, there remains a potential for strong support for their position from coastally-oriented developing countries.

A third problem involves obligations on States to establish domestic regulations no less effective than generally-accepted international regulations for continental shelf pollution, ocean dumping, and vessel-source pollution. While many States may be willing to carry out such an obligation regarding their vessels and the regulations in the 1973 IMCO Convention, there is considerable doubt that they will do so with regard to continental shelf pollution and ocean dumping. As to shelf pollution, there are no international regulations in existence and we may want to attempt to use the new LOS article as a basis for initiating international discussions of such regulations after the LOS Treaty is completed. On ocean dumping, a number of countries indicated that they did not accept the 1972 Ocean Dumping Convention as being the international regulations to be followed. Consequently, the extent to which we may succeed in advancing international environmental controls through the LOS treaty is unclear, although we will have far stronger arguments.

Finally, the U.S. was not successful in including a flag State obligation to apply effective regulations to deep seabed mining ships as a part of Article 18 of the Geneva SNT although this subject has not been fully considered by the committee.

B. Marine Scientific Research (MSR)

Many of the developing coastal States continued their demands for a general consent regime applicable to all research in the economic zone and the continental shelf. A closed negotiating group was created by Ambassador Brennan of Australia composed of approximately twenty countries. In the Brennan Group, several developing coastal States stated that a major factor behind their position was an expressed concern for protecting national security. India, in particular, repeatedly stressed that it must have the right to preclude research

by two or three countries. A further factor possibly motivating some of the coastal States was their desire to diminish the high seas character of the economic zone by obtaining complete control over scientific research. Many coastal States also argued that decisions made by coastal States, particularly those regarding security, could not be subject to binding third party dispute settlement. In the context of discussions based on the Evensen text which distinguishes between types of research, most of the coastal States involved in the Brennan Group indicated that they could accept that approach if they had clear rights regarding security and very limited dispute settlement.

Because of the impact upon the juridical character of the economic zone, the U.S. strenuously resisted any reference to a coastal right to protect security in the economic zone either by specific reference or a general cross-reference to peaceful purposes obligation that permitted unilateral coastal States prohibitions. The USSR, on the other hand, vacillated on the cross-reference to peaceful purposes and at one point even suggested during a small group discussion chaired by Ambassador Yankov that all research be subject to consent with the provision that for certain categories of research, consent would not be withheld. When subsequently pressed by developing countries, the USSR abandoned its consent proposal in the Yankov Group but it continued to vacillate on the issue of giving the coastal State an objection right regarding peaceful purposes.

The informal negotiating group established by Ambassador Brennan was useful in clearly identifying the security problem and in getting the Evensen text on MSR essentially accepted as the basis for the revised SNT. Chairman Yankov put together a small group at the heads of delegation level to wrestle with the security question. The settlement reached there, while not formally ratified, contained the following elements. First, the Evensen text would serve as the basic document for the revised SNT. Second, the coastal State would have the right to object prior to or during the research project if it believed the nature and objectives of the project to be other than those stated by the researcher. The coastal State, therefore, could object to the research on the grounds that its objectives were not scientific in nature but there would be no right to object on security or peaceful purpose grounds. Lastly, disputes

regarding research projects would be treated in the same way as other disputes in the economic zone; such disputes would not generally be subject to binding third-party settlement, with only certain disputes, e.g., those involving an abuse of power, subject to dispute settlement. This package would meet the actual concerns expressed by the coastal States but may not be adequate to meet their interest in enhancing the coastal character of the economic zone.

Despite this apparent settlement, Chairman Yankov in issuing his revised text required consent for all research in the economic zone but provided that such consent "shall not be withheld" unless research was resource-oriented, involved drilling or the use of explosives, unduly interfered with economic activities of the coastal State or involved artificial islands or installations subject to coastal State control under the Committee II text. However, there is no right for the coastal State to deny consent on security or peaceful purposes grounds. His text also includes many elements of the settlement achieved in the Yankov private meetings. There was no separate discussion of scientific research on the shelf but the text treats it in the same manner as research in the economic zone.

The new text creates enormous future negotiating difficulties. There will undoubtedly be strong pressures to alter the formulation so that consent shall not "normally" be withheld.

V. Compulsory Dispute Settlement

Negotiations on dispute settlement were conducted informally and almost entirely in the corridors and the Bureau chambers. As a result of the decision to hold a debate on compulsory dispute settlement (CDS) in plenary, there were no other Conference meetings scheduled on CDS, except for the extended Group of 77 discussions and a handful of inconsequential meetings of the Informal Working Group on CDS.

The plenary debate revealed an apparent change in the position of Kenya. Adede had acted as co-chairman of the

Informal Working Group on CDS and had been an ardent proponent of comprehensive CDS; in plenary, however, Njenga strongly opposed CDS in areas of national jurisdiction.

On the positive side, many of those States which advocated the exclusion of CDS from areas of national jurisdiction -- including India and Peru -- acknowledged that navigation and overflight disputes should be subject to CDS. Moreover, the LL/GDS took a strong stand in favor of CDS, and Nigeria -- right after the Kenyan attack -- advocated support for CDS.

With respect to the Soviet position, there appears to be continuing -- and favorable -- change. From their original stand in opposition to CDS, the Soviet Union progressed in Geneva to support for CDS for deep seabed, fisheries, pollution, and scientific research disputes. In New York they publicly accepted CDS for navigational disputes and indicated in private that they could eventually accept arbitration for disputes not covered by special procedures, subject to exceptions for military activities and delimitation disputes. In addition, the Soviet Union has stated that it can accept suits by individual owners and operators for the summary release of vessels. It should be noted, however, that the Soviet commitment to CDS for any disputes other than fisheries is not yet firm, since their statements differ from day to day and meeting to meeting.

Contracting Parties, under the revised Article 9, may choose one or more among four settlement procedures: (a) Law of the Sea Tribunal, (b) ICJ, (c) arbitral tribunal, or (d) a system of special procedures (although if (d) is selected, the Party must also select a, b, or c for areas not covered by d). This formula, by giving a Contracting Party the choice of the forum in which it will be sued, should provide sufficient flexibility to resolve the debate over procedures.

Under the revised Article 13, the dispute settlement procedures would be open only to Contracting Parties, except as provided in Chapter I (deep seabeds), Article 15 (vessel release), and Annex IC (LOS Tribunal). For a long time the U.S. has pushed for a provision that would give access to the CDS system to natural and juridical persons; however, limiting access to the main procedures to Contracting Parties may help close the door on access for national liberation movements, which started to gain momentum as a result of Arab pressure.

Article 18 of the revised SNT excludes from compulsory procedures disputes relating to the exercise of sovereign rights, exclusive rights, or exclusive jurisdiction of coastal state, subject to certain exceptions. One of these exceptions is for interference by the coastal state with navigation and overflight; another is for environmental obligations; another is for "failing to give due regard to any substantive rights specifically established by the present Convention in favor of other States." The issue raised by this language is the extent to which it applies to fishing and scientific research.

VI. Negotiating Trends and Regional Politics

A. Group of Five and EC 9

Difficulties in the Group of 5 have centered on Committee I issues and scientific research and also on some differences of degree on the importance of preserving the high seas status of the economic zone. In Committee I the principal area of contention is a quota system which would limit the number of mine sites for any one country. The object of this effort by the USSR, France, and Japan is to restrain what is feared to be a virtual US monopoly. In the closing days the Soviets were instrumental in preventing a compromise more favorable to us and other members of the 5 on scientific research, although we finally prevailed on strictly military aspects of our problem with their ideas. It is clear that Soviet reaction to the 200 mile fishing bill has affected our relations at this session. The French as in the past have consistently worked to slow the pace of the conference and to encourage Africans in the fears that they may be making hasty decisions. In addition, some other members of the EC nine (FRG, Belgium, Netherlands) have been reluctant to accelerate the pace because they wish to avoid early recognition of the economic zone in order to protect their distant water fishing fleets and strengthen their bargaining position with the UK on a common EC fishing policy, and also because they will not be ready to commence deep seabed mining as soon as the US. On the other hand, Japan now seems interested in wrapping up the negotiations quickly, possibly to head off a unilateral 12-mile territorial sea claim.

B. Straits States

During the straits debate only a few hardline straits States maintained all-out opposition to our position on straits connecting two parts of the high seas. The tone of Chinese opposition hardened. It seems apparent from private discussions that Malaysia and Egypt will both ultimately accept at least this aspect of the straits articles, contingent in Malaysia's case on finding a solution to the tanker pollution problem. (Japan has warned us that if we go too far on this, she will be unable to support us on warships and nuclear transit, as her domestic explanation of support is that she must do so to get free passage for tankers as well.) Spain also took a more moderate public stance during this session, but still opposes us on overflight and submerged passage.

C. Land-Locked and Geographically Disadvantaged States

(LL/GDS Chairman Austria) Several weeks into this Session the group of land-locked and geographically disadvantaged States, now some 54 strong of which more than 30 are also members of the Group of 77, began an extraordinarily vigorous and unified push to secure their basic demands: essentially transit rights for land-locked States to the sea, rights for land-locked and other geographically disadvantaged states to participate in living resources of the economic zone of their region, and revenue sharing from mineral resources of the continental shelf. (We regard their arguments for access to non-living resources as a tactic, and Singapore has publicly veered away from this already.) Had this push materialized at an earlier session it might have been more helpful in shaping the 200-mile economic zone. At this stage it has had the unfortunate effect upon coastal States of hardening their position in order to avoid what they foresee as an attempt to infringe upon resource rights which they already consider their own. While there is an outside limit on their bargaining capacity, that is, without a treaty the land-locked and GDS States will obtain virtually nothing, there is, nonetheless, a question of how far they will push their demands. At the end of this session some of the leaders of the group were quite clearly indicating that an acceptable accommodation would be a general obligation to work out rights of transit plus some form of preferential access over third States to the fishery resources of neighboring coastal States.

D. Unity of the Group of 77 (Chairman, Nepal)

The anticipated split in the Group of 77 on the basis of real ocean interests deepened at this session of the Conference. There had always been splits in Committees 2 and 3 because of the land-locked and geographically disadvantaged group; at this session splits also developed in Committee I between land-locked producers and moderates interested in an early settlement, on the one hand, and hard-line ideologues with no direct interest in the deep seabeds, on the other. On the question of the revised Committee I text the Africans in particular made an issue of the fact that they had not been included in the renegotiation of the texts and that the texts were a sell-out to the United States. Some of these appeals had the effect of further dividing the moderates favoring a treaty agreement from those waging the ideological battle. For the moment, the ideologues failed. However, because of the general desire for unity except in cases where national interests are strongly and adversely affected, intersessional negotiations among members of the 77 on Committee I issues particularly will have an important impact on the course of the next session. Among the trouble-makers, for differing reasons, are Algeria, Tanzania, India, Mexico and the Philippines.

The handling of the issue of a second session this summer is an interesting example of group dynamics. Meeting separately, the Latins, Arabs, Asians, WEO's and EE's, all had a majority favoring the session, and favoring Geneva as the site. The Africans had a vocal majority against, and in any event favored N.Y. When the 77 met, the Africans intimidated the rest, and the pro-second session 77 Chairman was forced to declare a consensus against. Once key Africans reversed position after U.S. intervention in capitals, and the group obtained N.Y. as a site, the 77 reached a consensus in favor of the session one day later. Since most Africans are not very active, and the Group is large, this indicates the immense power wielded by a few key Africans so long as the 77 functions a viable force: Kenya, Senegal, Tanzania, Algeria, Ghana, and on occasion, Nigeria.

E. The African Group (Chairman, Frank Njenga, Kenya)

In general the OAU Declaration remains the basic position of African States on LOS issues. However, because of

the large number of land-locked States in Africa, the land-locked GDS effort had a particularly divisive effect among the African States. This in turn has been met by increasing stridency on the part of coastal States led by Njenga of Kenya, Chairman of the African Group, to protect coastal State rights in the economic zone. The African Group as a whole suffered from lack of depth at this session, with many African States represented by their Permanent Missions in New York with little direct knowledge of their countries' LOS-related problems. The attitude of the African States toward completing a treaty in the near future is somewhat ambivalent. While they indicate more interest than some others in concluding a treaty, they are also uncertain as to what the ultimate benefits may be. Many believe they were out-maneuvered by the Latins. As in the past, they are also unpersuaded of the need for haste in arriving at any decision. This may have to do with some fears (now enhanced by the appearance of the revised C-I text) that they stand to gain little from the deep seabeds negotiation and can unilaterally protect their own interests, or at least those of the coastal African States, in economic zones. Algeria has been active in propounding the view that delay is better than haste in achieving a Group of 77 regime for the seabed. Its motivations are political, coupled with little relative benefit from an economic zone off its coast. Africa remains pivotal to the actions of the Group of 77 at the next session.

F. Latin Group (Chile, Colombia, Costa Rica-monthly chairmen)

Relations between the US and the Latin Group improved during this session, with the notable exception of Mexico in Committee I, and Peru and Ecuador remaining strident in Committee II. The Latin Group remains an influential group in the Group of 77 despite differences in real interest, largely due to effective leadership and substantive knowledge which has been a key factor in the previously united front of the Group of 77. Some Latin States, notably Argentina and Chile, have moved toward a more moderate position on navigational issues. Perhaps the most difficult Latin development was the sudden surfacing of extreme Mexican opposition to the revised texts in Committee I.

As yet unresolved in the Latin Group is the relationship between the continental States and the English-speaking Caribbean Island States which are seeking to share in the fisheries resources of continental States. A political divergence was also revealed in connection with a nuanced aspect of Article 136 (2), with the English-speaking Caribbean States favoring deletion of a clause that could hurt Belize.

G. Arab Group

Despite efforts to achieve unity, the Arab Group remained divided on the key issue of interest to that group, which is straits. Saudi Arabia and Iraq assumed an active role in attempting to persuade other delegates of the importance to oil exporting countries of freedom of transit connecting two parts of the high seas, carrying many with them, including Algeria. However, during the debate on straits Yemen, Democratic Yemen, Oman and Somalia actively opposed the straits articles. Egyptian statements tended to support the opponents although it appeared in private consultations that her principal concern remains Tiran. Egypt is apparently not yet willing to accept a regime of non-suspendable innocent passage for Tiran as provided in the SNT except in the context of an Arab-Israeli settlement; Egypt and Saudi Arabia carried the group on this issue. The Arab Group is also affected by efforts by LL/GDS to participate in the economic zone resources, as many of them are members of the Group. Since most Arab States which are costal are largely zone-locked in the Mediterranean, Red Sea, and Persian Gulf, their interest in Committee II issues other than straits is not critical and they have no great enthusiasm for the economic zone, and take liberal attitudes on navigation (except for the straits States). Although the Arab Group took a position favoring a second session they quickly wavered in the face of African appeals for Group of 77 unity. Although the Group has given support to hard-line Algerian positions in Committee I, they have not given the subject head of delegation level attention. It is questionable whether the problem has been assessed in foreign offices on any level other than Group of 77 politics.

H. Asian Group (Iran)

Asian States have generally focused on individual interests as in the case of archipelagoes for Indonesia and the Philippines, the Malacca straits for Indonesia and Malaysia, participation in the LL/GDS for others, notably Singapore, which has taken a leading role in the group. The Philippines has continued an extreme position on archipelagic and straits passage. China has continued her efforts to maximize opportunities to enhance her role as champion of the third world and to condemn the hegemony of the superpowers, and continues strong opposition on straits and warship navigation. However vocal, Chinese attacks have been relatively limited in number and there are indications that China does not intend to disrupt the Conference, aside from some attempts to bait the USSR, including a sharp exchange in one of the few on-the-record debates (peaceful uses of ocean spaces).

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